

COUNTY LAND USE AND DEVELOPMENT AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill amends provisions related to county land use and development.

Highlighted Provisions:

This bill:

- ▶ prohibits a county of the first class from entering into a development agreement that requires the incorporation or annexation of an unincorporated area of the county;
- ▶ modifies the requirements for a county to approve expansion area urban development and moves the requirements to Title 17, Counties; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 10-2-402**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 7
- 10-2-403**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 15
- 17-27a-102**, as last amended by Laws of Utah 2019, Chapter 384

ENACTS:

- 17-27a-526**, Utah Code Annotated 1953



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-2-402** is amended to read:

10-2-402. Annexation -- Limitations.

(1) (a) A contiguous, unincorporated area that is contiguous to a municipality may be annexed to the municipality as provided in this part.

(b) Except as provided in Subsection (1)(c), an unincorporated area may not be annexed to a municipality unless:

(i) ~~it~~ the unincorporated area is a contiguous area;

(ii) ~~it~~ the unincorporated area is contiguous to the municipality;

(iii) annexation will not leave or create an unincorporated island or unincorporated peninsula:

(A) except as provided in Subsection **10-2-418(3)**; or

(B) unless the county and municipality have ~~otherwise~~ agreed; and

(iv) for an area located in a specified county ~~[with respect to an annexation that occurs after December 31, 2002]~~, the area is within the proposed annexing municipality's expansion area.

(c) A municipality may annex an unincorporated area within a specified county that does not meet the requirements of Subsection (1)(b), leaving or creating an unincorporated island or unincorporated peninsula, if:

(i) the area is within the annexing municipality's expansion area;

(ii) the specified county in which the area is located and the annexing municipality agree to the annexation;

(iii) the area is not within the area of another municipality's annexation policy plan, unless the other municipality agrees to the annexation; and

(iv) the annexation is for the purpose of providing municipal services to the area.

(2) Except as provided in Section **10-2-418**, a municipality may not annex an unincorporated area unless a petition under Section **10-2-403** is filed requesting annexation.

(3) (a) An annexation under this part may not include part of a parcel of real property and exclude part of that same parcel unless the owner of that parcel has signed the annexation petition under Section **10-2-403**.

59 (b) A piece of real property that has more than one parcel number is considered to be a
60 single parcel for purposes of Subsection (3)(a) if owned by the same owner.

61 (4) A municipality may not annex an unincorporated area in a specified county for the
62 sole purpose of acquiring municipal revenue or to retard the capacity of another municipality to
63 annex the same or a related area unless the municipality has the ability and intent to benefit the
64 annexed area by providing municipal services to the annexed area.

65 [~~(5) (a) As used in this subsection, "expansion area urban development" means:]~~

66 [~~(i) for a specified county, urban development within a city or town's expansion area;~~

67 ~~or]~~

68 [~~(ii) for a county of the first class, urban development within a city or town's expansion
69 area that:]~~

70 [~~(A) consists of 50 or more acres;]~~

71 [~~(B) requires the county to change the zoning designation of the land on which the
72 urban development is located; and]~~

73 [~~(C) does not include commercial or industrial development that is located within a
74 mining protection area as defined in Section 17-41-101, regardless of whether the commercial
75 or industrial development is for a mining use as defined in Section 17-41-101:]~~

76 [~~(b) A county legislative body may not approve expansion area urban development
77 unless:]~~

78 [~~(i) the county notifies the city or town of the proposed development; and]~~

79 [~~(ii) (A) the city or town consents in writing to the development;]~~

80 [~~(B) within 90 days after the county's notification of the proposed development, the
81 city or town submits to the county a written objection to the county's approval of the proposed
82 development and the county responds in writing to the city or town's objection; or]~~

83 [~~(C) the city or town fails to respond to the county's notification of the proposed
84 development within 90 days after the day on which the county provides the notice.]~~

85 [~~(6)~~ (5) (a) An annexation petition may not be filed under this part proposing the
86 annexation of an area located in a county that is not the county in which the proposed annexing
87 municipality is located unless the legislative body of the county in which the area is located has
88 adopted a resolution approving the proposed annexation.

89 (b) Each county legislative body that declines to adopt a resolution approving a

90 proposed annexation described in Subsection ~~[(6)]~~ (5)(a) shall provide a written explanation of
91 ~~[its]~~ the county legislative body's reasons for declining to approve the proposed annexation.

92 ~~[(7)]~~ (6) (a) As used in this Subsection ~~[(7)]~~ (6), "airport" means an area that the
93 Federal Aviation Administration has, by a record of decision, approved for the construction or
94 operation of a Class I, II, or III commercial service airport, as designated by the Federal
95 Aviation Administration in 14 C.F.R. Part 139.

96 (b) A municipality may not annex an unincorporated area within 5,000 feet of the
97 center line of any runway of an airport operated or to be constructed and operated by another
98 municipality unless the legislative body of the other municipality adopts a resolution
99 consenting to the annexation.

100 (c) A municipality that operates or intends to construct and operate an airport and does
101 not adopt a resolution consenting to the annexation of an area described in Subsection ~~[(7)]~~
102 (6)(b) may not deny an annexation petition proposing the annexation of that same area to that
103 municipality.

104 ~~[(8)]~~ (7) (a) As used in this subsection, "project area" means a project area as defined in
105 Section 63H-1-102 that is in a project area plan as defined in Section 63H-1-102 adopted by
106 the Military Installation Development Authority under Title 63H, Chapter 1, Military
107 Installation Development Authority Act.

108 (b) A municipality may not annex an unincorporated area located within a project area
109 without the authority's approval.

110 (c) (i) Except as provided in Subsection ~~[(8)]~~ (7)(c)(ii), the Military Installation
111 Development Authority may petition for annexation of the following areas to a municipality as
112 if ~~[it]~~ the Military Installation Development Authority was the sole private property owner
113 within the area:

114 (A) an area within a project area;

115 (B) an area that is contiguous to a project area and within the boundaries of a military
116 installation;

117 (C) an area owned by the Military Installation Development Authority; and

118 (D) an area that is contiguous to an area owned by the Military Installation
119 Development Authority that the Military Installation Development Authority plans to add to an
120 existing project area.

121 (ii) If any portion of an area annexed under a petition for annexation filed by the
122 Military Installation Development Authority is located in a specified county:

123 (A) the annexation process shall follow the requirements for a specified county; and
124 (B) the provisions of Subsection ~~10-2-402[(6)](5)~~ do not apply.

125 Section 2. Section **10-2-403** is amended to read:

126 **10-2-403. Annexation petition -- Requirements -- Notice required before filing.**

127 (1) Except as provided in Section ~~10-2-418~~, the process to annex an unincorporated
128 area to a municipality is initiated by a petition as provided in this section.

129 (2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed
130 annexation of an area located in a county of the first class, the person or persons intending to
131 file a petition shall:

132 (A) file with the city recorder or town clerk of the proposed annexing municipality a
133 notice of intent to file a petition; and

134 (B) send a copy of the notice of intent to each affected entity.

135 (ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of the
136 area that is proposed to be annexed.

137 (b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be
138 annexed is located shall:

139 (A) mail the notice described in Subsection (2)(b)(iii) to:

140 (I) each owner of real property located within the area proposed to be annexed; and

141 (II) each owner of real property located within 300 feet of the area proposed to be
142 annexed; and

143 (B) send to the proposed annexing municipality a copy of the notice and a certificate
144 indicating that the county mailed the notice [~~has been mailed~~] as required under Subsection
145 (2)(b)(i)(A).

146 (ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20
147 days after [~~receiving~~] the day on which the county received from the person or persons [~~who~~]
148 that filed the notice of intent:

149 (A) a written request to mail the required notice; and

150 (B) payment of an amount equal to the county's expected actual cost of mailing the
151 notice.

152 (iii) Each notice required under Subsection (2)(b)(i)(A) shall:

153 (A) be in writing;

154 (B) state, in bold and conspicuous terms, substantially the following:

155 "Attention: Your property may be affected by a proposed annexation.

156 Records show that you own property within an area that is intended to be included in a
157 proposed annexation to (state the name of the proposed annexing municipality) or that is within
158 300 feet of that area. If your property is within the area proposed for annexation, you may be
159 asked to sign a petition supporting the annexation. You may choose whether to sign the
160 petition. By signing the petition, you indicate your support of the proposed annexation. If you
161 sign the petition but later change your mind about supporting the annexation, you may
162 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk
163 of (state the name of the proposed annexing municipality) within 30 days after (state the name
164 of the proposed annexing municipality) receives notice that the petition has been certified.

165 There will be no public election on the proposed annexation because Utah law does not
166 provide for an annexation to be approved by voters at a public election. Signing or not signing
167 the annexation petition is the method under Utah law for the owners of property within the area
168 proposed for annexation to demonstrate their support of or opposition to the proposed
169 annexation.

170 You may obtain more information on the proposed annexation by contacting (state the
171 name, mailing address, telephone number, and email address of the official or employee of the
172 proposed annexing municipality designated to respond to questions about the proposed
173 annexation), (state the name, mailing address, telephone number, and email address of the
174 county official or employee designated to respond to questions about the proposed annexation),
175 or (state the name, mailing address, telephone number, and email address of the person who
176 filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person filed the
177 notice of intent, one of those persons). Once filed, the annexation petition will be available for
178 inspection and copying at the office of (state the name of the proposed annexing municipality)
179 located at (state the address of the municipal offices of the proposed annexing municipality).";
180 and

181 (C) be accompanied by an accurate map identifying the area proposed for annexation.

182 (iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any

183 other information or materials related or unrelated to the proposed annexation.

184 (c) (i) After receiving the certificate from the county as provided in Subsection
185 (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or persons
186 [~~who~~] that filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation
187 petition for the annexation proposed in the notice of intent.

188 (ii) An annexation petition provided by the proposed annexing municipality may be
189 duplicated for circulation for signatures.

190 (3) Each petition under Subsection (1) shall:

191 (a) be filed with the applicable city recorder or town clerk of the proposed annexing
192 municipality;

193 (b) [~~contain the signatures of;~~] if all the real property within the area proposed for
194 annexation is owned by a public entity other than the federal government, contain the
195 signatures of the owners of all the publicly owned real property[, ~~or the owners of private real~~
196 ~~property that:~~];

197 (c) contain the signatures of the owners of private real property that:

198 (i) is located within the area proposed for annexation;

199 (ii) (A) subject to Subsection (3)[~~(b)~~](c)(ii)(C), covers a majority of the private land
200 area within the area proposed for annexation;

201 (B) covers 100% of rural real property as that term is defined in Section [17B-2a-1107](#)
202 within the area proposed for annexation; and

203 (C) covers 100% of the private land area within the area proposed for annexation, if the
204 area is within an agriculture protection area created under Title 17, Chapter 41, Agriculture,
205 Industrial, or Critical Infrastructure Materials Protection Areas, or a migratory bird production
206 area created under Title 23, Chapter 28, Migratory Bird Production Area; and

207 (iii) is equal in value to at least 1/3 of the value of all private real property within the
208 area proposed for annexation;

209 [~~(e)~~] (d) be accompanied by:

210 (i) an accurate and recordable map, prepared by a licensed surveyor, of the area
211 proposed for annexation; and

212 (ii) a copy of the notice sent to affected entities as required under Subsection
213 (2)(a)(i)(B) and a list of the affected entities to which the person or persons intending to file a

214 petition sent the notice [~~was sent~~];

215 [~~(d)~~] (e) if the area proposed to be annexed is located in a county of the first class,
216 contain on each signature page a notice in bold and conspicuous terms that states substantially
217 the following:

218 "Notice:

219 • There will be no public election on the annexation proposed by this petition because
220 Utah law does not provide for an annexation to be approved by voters at a public election.

221 • If you sign this petition and later decide that you do not support the petition, you may
222 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk
223 of (state the name of the proposed annexing municipality). If you choose to withdraw your
224 signature, you shall do so no later than 30 days after (state the name of the proposed annexing
225 municipality) receives notice that the petition has been certified.";

226 [~~(e)~~] (f) if the petition proposes the annexation of an area located in a county that is not
227 the county in which the proposed annexing municipality is located, be accompanied by a copy
228 of the resolution, required under Subsection 10-2-402[~~(6)~~](5), of the legislative body of the
229 county in which the area is located; and

230 [~~(f)~~] (g) designate up to five of the signers of the petition as sponsors, one of whom
231 shall be designated as the contact sponsor, and indicate the mailing address of each sponsor.

232 (4) A petition under Subsection (1) may not propose the annexation of all or part of an
233 area that was proposed for annexation to a municipality in a previously filed petition that has
234 not been denied, rejected, or granted.

235 (5) (a) Except as provided in Subsection (5)(b), an annexation petition under Subsection
236 (1) may not propose the annexation of an area that includes some or all of an area proposed to
237 be incorporated in a request for a feasibility study under Section 10-2a-202 if:

238 (i) the request was filed before the filing of the annexation petition; and

239 (ii) the request, or a petition under Section 10-2a-208 based on that request, is still
240 pending on the date the annexation petition is filed.

241 (b) Subsection (5)(a) does not apply to an annexation petition if:

242 (i) the annexation petition proposes the annexation of an area included in a notice of
243 intent described in Subsection (5)(c); or

244 (ii) the annexation petition:

245 (A) is filed on or after November 15, 2020; and

246 (B) proposes the annexation of an area located in a county other than the first class.

247 (c) (i) A person intending to file a petition for annexation of an area located in a county
248 other than a first class county may, on or before August 5, 2020, file with the city recorder or
249 town clerk of the proposed annexing municipality a notice of intent to file a petition for
250 annexation.

251 (ii) The notice of intent described in Subsection (5)(c)(i) shall include an accurate map
252 of the area that is proposed to be annexed.

253 (6) If practicable and feasible, the boundaries of an area proposed for annexation shall
254 be drawn:

255 (a) along the boundaries of existing local districts and special service districts for
256 sewer, water, and other services, along the boundaries of school districts whose boundaries
257 follow city boundaries or school districts adjacent to school districts whose boundaries follow
258 city boundaries, and along the boundaries of other taxing entities;

259 (b) to eliminate islands and peninsulas of territory that is not receiving municipal-type
260 services;

261 (c) to facilitate the consolidation of overlapping functions of local government;

262 (d) to promote the efficient delivery of services; and

263 (e) to encourage the equitable distribution of community resources and obligations.

264 (7) On the date of filing, the petition sponsors shall deliver or mail a copy of the
265 petition to the clerk of the county in which the area proposed for annexation is located.

266 (8) A property owner who signs an annexation petition proposing to annex an area
267 located in a county of the first class may withdraw the owner's signature by filing a written
268 withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30
269 days after the day on which the municipal legislative [body's receipt of] body receives the
270 notice of certification under Subsection 10-2-405(2)(c)(i).

271 Section 3. Section 17-27a-102 is amended to read:

272 **17-27a-102. Purposes -- General land use authority -- Limitations.**

273 (1) (a) The purposes of this chapter are to:

274 (i) provide for the health, safety, and welfare;

275 (ii) promote the prosperity;

276 (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of
277 each county and each county's present and future inhabitants and businesses;

278 (iv) protect the tax base;

279 (v) secure economy in governmental expenditures;

280 (vi) foster the state's agricultural and other industries;

281 (vii) protect both urban and nonurban development;

282 (viii) protect and ensure access to sunlight for solar energy devices;

283 (ix) provide fundamental fairness in land use regulation;

284 (x) facilitate orderly growth and allow growth in a variety of housing types; and

285 (xi) protect property values.

286 (b) [Fø] Except as provided in Subsection (4), to accomplish the purposes of this
287 chapter, a county may enact all ordinances, resolutions, and rules and may enter into other
288 forms of land use controls and development agreements that the county considers necessary or
289 appropriate for the use and development of land within the unincorporated area of the county or
290 a designated mountainous planning district, including ordinances, resolutions, rules, restrictive
291 covenants, easements, and development agreements governing:

292 (i) uses;

293 (ii) density;

294 (iii) open spaces;

295 (iv) structures;

296 (v) buildings;

297 (vi) energy-efficiency;

298 (vii) light and air;

299 (viii) air quality;

300 (ix) transportation and public or alternative transportation;

301 (x) infrastructure;

302 (xi) street and building orientation and width requirements;

303 (xii) public facilities;

304 (xiii) fundamental fairness in land use regulation; and

305 (xiv) considerations of surrounding land uses to balance the foregoing purposes with a
306 landowner's private property interests and associated statutory and constitutional protections.

307 (2) Each county shall comply with the mandatory provisions of this part before any
308 agreement or contract to provide goods, services, or municipal-type services to any storage
309 facility or transfer facility for high-level nuclear waste, or greater than class C radioactive
310 waste, may be executed or implemented.

311 (3) (a) Any ordinance, resolution, or rule enacted by a county pursuant to its authority
312 under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas
313 activity, as described in Section 40-6-2.5.

314 (b) A county may enact an ordinance, resolution, or rule that regulates surface activity
315 incident to an oil and gas activity if the county demonstrates that the regulation:

316 (i) is necessary for the purposes of this chapter;

317 (ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and

318 (iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas
319 activity, as described in Section 40-6-2.5.

320 (4) A county of the first class may not enter into a development agreement that requires
321 an individual or an entity to initiate a process for:

322 (a) an unincorporated area of the county to incorporate as a municipality in accordance
323 with Title 10, Chapter 2a, Municipal Incorporation; or

324 (b) a municipality to annex an unincorporated area of the county in accordance with
325 Title 10, Chapter 2, Part 4, Annexation.

326 Section 4. Section 17-27a-526 is enacted to read:

327 **17-27a-526. Requirements for county approval of expansion area urban**
328 **development.**

329 (1) As used in this section:

330 (a) "Expansion area urban development" means:

331 (i) for a county of the second, third, fourth, fifth, or sixth class, urban development
332 within a city or town's expansion area; or

333 (ii) for a county of the first class, urban development within a city or town's expansion
334 area that:

335 (A) consists of 50 or more acres; and

336 (B) requires the county to change the zoning designation of the land on which the
337 urban development is located.

338 (b) "Urban development" means the same as that term is defined in Section 10-2-401.
339 (2) A county legislative body may not approve expansion area urban development
340 unless:
341 (a) the county sends written notification of the proposed development to the city or
342 town; and
343 (b) (i) within 90 days after the day on which the county sends to the city or town the
344 notification described in Subsection (2)(a), the city or town consents to the development in
345 writing;
346 (ii) (A) within 90 days after the day on which the county sends to the city or town the
347 notification described in Subsection (2)(a), the city or town submits to the county a written
348 objection to the county's approval of the proposed development; and
349 (B) the county legislative body overrules the city or town's objection by an affirmative
350 vote of two-thirds of the county legislative body; or
351 (iii) the city or town fails to respond to the notification described in Subsection (2)(a)
352 within 90 days after the day on which the county sends the written notification.